IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3391 OF 2005

Rebecca Expo Investment Pvt.Ltd., ..Petitioners.

Versus

The State of Maharashtra & Ors. ..Respondents.

Mr. V.A. Gangle for the Petitioner.

Mr. D.A. Patil,AGP for the Respondent Nos.1 to 7.

Ms.Seema Sarnaik for the Respondent Nos. 8 to 12.

CORAM : S. A. BOBDE, J.

DATED : 09TH & 12TH AUGUST,2005.

P.C.:

1. Rule, returnable forthwith.

Mr. Patil, learned AGP waives service of rule for the Respondents Nos.1 to 7 and Ms.Seema Sarnaik for the Respondents Nos.8 to 12.

Heard by consent.

2. The petitioners are a Company, who are essentially aggrieved by the order, refusing them permission to be impleaded as a party to the suit

filed by the Respondents 8 to 12 against the State Government, being civil suit No. 142/2004.

3. The respondents 8 to 12 claim right to excavate sand in the River Savitri and Bankot Creek. They have asserted their right to excavate sand from the said river. According to them they have been granted right to excavate sand in the segment of the river from Vicharewadi to Dasgaon. The petitioners, i.e. Rebecca Expo Investment Pvt.Ltd. Company, claim on the basis of contract dated 15.12.2004 that the very same segment between Vicharwadi to Dasgaon has been granted to them for excavation of sand by mechanical operations vide Exh.‘C’ page 48 to the petition. According to the petitioners they are entitled to a much larger segment in which the segment between Vicharewadi to Dasgaon, is included.

4. In the suit filed by the respondents 8 to 12, the trial court has granted an order, restraining the State Government from permitting excavation to anybody from the area between Vicharwadi to Dasgaon by using dredgers till the disposal of the suit. Since the petitioners use dredgers over this segment which they claim as being allotted to them, they preferred an

appeal to the learned Addl.District Court at Alibag. The learned Appellate court has held that the petitioners do not have any right to appeal against an injunction in the suit, to which they are not a party and that prima facie, they have not shown that they are interested in the subject matter of the suit. The learned appellate court, Alibag, has dismissed the petitioners Appeal.

5. The petitioners have challenged before this court the order of the trial court in suit No. 142/2004, granting reliefs to respondents 8 to 12 and the order of the appellate court, refusing them the permission to appeal.

6. It is clear that the appellate court was not entirely right in holding that a person, not a party to the suit, is not entitled to file Appeal. The view of the Appellate Court contrary to the law laid down by this Court vide - The Province of Bombay vs. Western India Automobile Association, reported in AIR (36) 1949 Bombay 141. Therefore, I am inclined to set aside the impugned order of the learned District Judge in appeal. In any case, I am of view that the petitioners are entitled to apply for being impleaded

as party in Civil Suit No. 142/2004.

7. In the circumstances, I am of view that the impugned order of the the learned District Judge is liable to be set aside since, there appears to be a dispute about the area which is reserved for excavation manually i.e. by Hatpati, which appear to have been allotted to the respondents 8 to 12 and the area which appears to have been allotted to the petitioners. Both parties are claiming rights over the same area.

8. In this view of the matter, I am of view that in order to prevent multiplicity of the proceedings, the impugned order of the learned District Judge, Alibag is liable to be set aside and it is hereby set aside. The petitioners shall be at liberty to apply for being impleaded as party in the suit. Ms. Sarnaik, the learned counsel for the respondent Nos. 8 to 12, states that the said respondents- plaintiffs have no objection to the petitioners being impleaded as a party in the said suit and that they shall agree for such impleadment, when necessary steps are taken before the trial court.

9. Petition is disposed of in the above terms.

Dt. 09 & 12.08.2005 (S.A.BOBDE,J.)

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